Sherman Act the dissolution of the International Harvester Company, or of any other combination that possessed the power to control an industry, could only be justified on proof that the power so held had been, or was about to be, abused to the injury of the public or individuals.

The decision of the Supreme Court will be awaited with widespread interest. To affirm the lower court and hold that mere size and the potential control of an industry constitute a sufficient basis for dissolution would devitalize completely the rule of reason. The case is consequently one of tremendous importance to American industry.

LEGISLATIVE MINIMUM WAGE FOR WOMEN AND MINORS. — The Fourteenth Amendment to the Constitution does not deprive the states of the right, in the exercise of the police powers of government, to take measures for protecting the safety, health, morals and welfare of their citizens.[1] While it is now recognized that a state may upon this ground regulate the conditions of labor in modern industry in the interest of social betterment, the constitutional limitations upon legislation of this character are not in general well defined. As regards limiting the hours of work, however, the prevailing doctrine has come to be that reasonable restrictions may be placed upon the length of daily employment of all women and children workers [2] and of men engaged in particularly dangerous and unhealthful occupations.[3] Decisions to this effect are plainly sound in view of the manifest necessity of protecting the health of such classes of workers from the peculiar risks to which they are subjected. On the other hand, the validity of minimum wage statutes had not been determined until the Supreme Court of Oregon recently held constitutional a statute which authorizes a commission to fix under criminal penalties a legal minimum wage for women and children employed in any industry. *Stettler* v. *O'Hara*, 139 Pac. 743.[4]

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control secured"; but the opinion taken as a whole isolates this single clause and justifies regarding the case as an authority for the proposition that it is not power but the abuse of it which constitutes a violation of the Sherman Act.

[1] Harlan, J., in Patterson *v.* Kentucky, 97 U. S. 504; and see article by Francis J. Swayze in 26 HARV. L. REV. 1. For an example of the broad application of the police power in another connection, see this issue of the REVIEW, p. 84.

[2] State *v.* Buchanan, 29 Wash. 602, 70 Pac. 52; Muller *v.* Oregon, 208 U. S. 412; Wenham *v.* State, 65 Neb. 394, 91 N. W. 421; Commonwealth *v.* Hamilton Co., 120 Mass. 383; Ritchie Co. *v.* Wayman, 244 Ill. 509; People *v.* Elderding, 254 Ill. 579; Commonwealth *v.* Riley, 210 Mass. 387; State *v.* Somerville, 67 Wash. 638, 122 Pac. 324. Ritchie *v.* People, 155 Ill. 98, *contra*, has been distinguished by the later Illinois cases.

[3] Holden *v.* Hardy, 169 U. S. 366; *Ex parte* Boyce, 27 Nev. 299, 75 Pac. 1. *Re* Morgan, 26 Colo. 415, 58 Pac. 1071, *contra*. In the following case the nature of the employment was held not to justify the regulation: Lochner *v.* New York, 198 U. S. 45; and see *Ex parte* Westerfield, 55 Cal. 550. Without resorting to the exercise of the police power, the state may as a condition of letting its contracts enforce more stringent regulations as to hours of labor upon work done for itself or its municipalities. Atkin *v.* Kansas, 191 U. S. 207; Byars *v.* State, 2 Okla. Cr. 481. People *v.* Coler, 166 N. Y. 1, *contra*. On the same ground a minimum wage may be enforced in public employment. Malette *v.* Spokane, 137 Pac. 496 (Ore.). But see Street *v.* Varney Co., 160 Ind. 338, 66 N. E. 895.

[4] A statement of the facts of this case appears in RECENT CASES, p. 105.

Statutes regulating wages seem to differ somewhat radically from those which limit the hours of labor. The latter may constitutionally restrict the bargaining of employer and employee only to an extent determined by the harmful effects of the occupation upon the class of workers in question; whereas the minimum wage acts fix the pay a worker must receive by the sum needed to meet adequately the local cost of living, a sum which may vary in different localities.[5] Regulation of the hours of labor may be considered as preventing the employer from using his superior economic position to injure the health of his employees. Fixing the minimum wage seems rather like compelling him affirmatively to assist them in order to correct social evils which, in a sense, he has not caused.[6] The employer may compare himself to the keeper of a restaurant, whom the state may legitimately prohibit from selling harmful food, but who cannot be ordered to lower his prices in order to solve the social problem of under-feeding.

Such arguments, it is submitted, exaggerate the difference between the two methods of regulation by minimizing the claim which the workers have upon the industry that employs them. The manufacturer who underpays is in fact affirmatively injuring his employees by utilizing the economic pressure for employment as a club. The wages paid an employee are as much the effect of the industry upon him as the hours he is made to work, and settle in large measure his whole condition in life. Moreover, if the state is to reduce the amount of labor the worker may daily offer for sale, it must for his protection prevent the employer from reducing correspondingly the price paid for it.[7] It would seem therefore that the police power must extend so far. That it does is indicated by the analogous case of the usury laws.[8] Fixing the return a lender may exact for the use of his money seems not essentially different from fixing the return an employer must give for the labor he receives.

The minimum wage, then, seems fundamentally similar in principle to other accepted applications of the police power. To be constitutional, it must also appear reasonably adapted to improve the welfare of the

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[5] For this reason it would appear that if the minimum wage is constitutional in any case for men workers, there could be no ground for limiting it to dangerous occupations.

[6] *Cf.* COOLEY, CONST. LIM., 7 ed., p. 870; TIEDEMAN, LIMITATIONS OF THE POLICE POWER, § 178; FREUND, POLICE POWER, § 318; see also a pamphlet by Rome G. Brown entitled "THE MINIMUM WAGE."

[7] Although this argument applies only to a minimum wage for such workers as are now subject to legal regulation of the hours of labor, — namely, those employed in hazardous occupations and women and children, — it is serviceable in the Oregon case, since there is an Oregon hours-of-labor statute applying to the same classes of employees as the act here in question.

[8] See an article by Learned Hand in 21 HARV. L. REV. 495, 505, n. 2. As is there pointed out, the usury statutes, with a continuous history since the days of Tudor paternalistic legislation, are one of the few forms of governmental regulation of business which came unscathed through the period of the *laissez faire* economic doctrine. Although anomalous in this respect, they are none the less legitimate instances of the sort of thing that represented "due process of law" at an early period. See in this connection articles by E. S. Corbin in 24 HARV. L. REV. 366, 460, and Prof. Roscoe Pound in 18 YALE L. J. 454. Wages were also regulated by statute as long ago as 5 Eliz., but such laws had become a dead letter before the adoption of our Constitution. The recent statutes are probably the first attempt to fix wages by law since colonial days.

workers in question.[9] The imposing array of evidence adduced by sociologists seems clearly to indicate the need of a remedy for the starvation wages paid the workers in many of the sweated industries.[10] The health of the employees is enfeebled by the conditions under which they must live, their value as citizens is lessened, and the women are to a considerable extent unfitted for motherhood and driven into immorality. Whether the state control of wages is calculated to improve these conditions is for the courts to say.[11] The question is obviously one of fact. The court, however, should not be controlled by the economic theories of the judges who compose it, but should accept any reasonable attempt of the legislature to solve the industrial problems which confront modern lawgivers, so long, at least, as it does not "infringe fundamental principles as they have been understood by the traditions of our people and our law." [12]

PARENTAL LIABILITY FOR A SON'S USE OF THE FAMILY AUTOMOBILE. — Generally the father is better able than the son to pay for harm caused by the latter. It is, however, well settled that at common law the parent is not liable for the torts of even his minor child.[1] But the injured party may benefit by discovering a master and servant relationship between the two.[2] Even this relationship avails nothing if the servant is acting for his own purposes "on a frolic of his own." [3] Thus when a hired chauffeur goes for a "joy-ride" in his employer's car, the employer is not liable for any damage the chauffeur may cause.[4] This is so when he takes the car for his own delectation with or without permission.[5] Moreover, when a son takes his father's horse for his own affairs no liability attaches to the father.[6] Between a hired chauffeur and a pampered son there is a considerable difference in fact. The difference is still more marked between an automobile and a horse. Does the law make a distinction?

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[9] See Mugler *v.* Kansas, 123 U. S. 623, 661; Minnesota *v.* Barber, 136 U. S. 313, 320; Lawton *v.* Steele, 152 U. S. 133, 137.

[10] See literature referred to in the principal case; also, ANNALS AM. ACAD. POL. AND SOCIAL SCIENCE, July, 1913; BROWN, UNDERLYING PRINCIPLES OF MODERN LEGISLATION, p. 316.

[11] In this connection the rapid spread of the legislative minimum wage in this country is significant. The following states have adopted it in some form: California, STATUTES 1913, cap. 324; Colorado, LAWS 1913, cap. 110; Massachusetts, ACTS 1912, cap. 706, ACTS 1913, caps. 330, 673; Minnesota, LAWS 1913, cap. 547; Nebraska, LAWS 1913, cap. 211; Ohio, Constitutional Amendment, 1913; Oregon, ACTS 1913, cap. 62; Utah, LAWS 1913, cap. 63; Washington, LAWS 1913, cap. 174; Wisconsin, STATUTES 1913, cap. 1729, LAWS 1913, cap. 712.

[12] Holmes, J., *dis.*, in Lochner *v.* New York, *supra*, at p. 76.

[1] Chastain *v.* Johns, 120 Ga. 977, 48 S. E. 343; Moon *v.* Towers, 8 C. B. (N. S.) 611.

[2] Lashbrook *v.* Patten, 1 Duv. (Ky.) 316; Smith *v.* Jordan, 211 Mass. 269, 97 N. E. 761.

[3] Parke, B., in Joel *v.* Morison, 6 C. & P. 501.

[4] Lotz *v.* Hanlon, 217 Pa. 339, 66 Atl. 525; Jones *v.* Hoge, 47 Wash. 663, 92 Pac. 433; Hartnett *v.* Gryzmish, 105 N. E. 988 (Mass.). But see Whimster *v.* Holmes, 164 S. W. 236 (Mo.).

[5] Davies *v.* Anglo-American Auto. Tire Co., 145 N. Y. Supp. 341; Cunningham *v.* Castle, 127 N. Y. App. Div. 580.

[6] Maddox *v.* Brown, 71 Me. 432.